IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3387 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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NEW VASANT MASALA INDUSTRIES - Petitioner(s)
Versus
ZALOD MUNICIPAL BOROUGH & ORS. - Respondent(s)

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Appearance :
Shri R.R. Vakil for Petitioner(s).
Shri H.S. Munshaw for Respondent(s) : 1.
Shri R.C. Kodekar, Asst. Government Pleader for Respondent Nos.2-3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/03/2007

ORAL JUDGMENT

Present case has a little chequered history and the wrinkles are required to be creased out for appropriate appreciation of the dispute

between the parties.

2. The petitioner, New Vasant Masala Industries, had installed its factory within the local limits of Zalod Nagar Panchayat for grinding, packing and packaging of different spices. Under Rule 36(2) of the Gujarat Gram and Nagar Panchayat Taxes and Fees Rules, 1961, it applied for grant of exemption from the levy of the octroi. The application was rejected by Zalod Nagar Panchayat. Being aggrieved by the said order, the petitioner preferred an appeal to the District Panchayat Committee, which allowed the same on 1st November, 1991. Zalod Nagar Panchayat, being aggrieved by the order passed by the District Panchayat Committee, filed a revision to the Development Commissioner, who *vide* his order dated 31st March, 1992 allowed the said revision and upheld the decision of the Nagar Panchayat rejecting the application. The petitioner thereafter filed Special Civil Application No.3273 of 1992, which was allowed by this Court on 11th May, 1992 granting liberty to the petitioner to apply afresh to the Nagar Panchayat for grant of exemption.

2.1 Somewhere in December-1992, the petitioner made a fresh application seeking exemption, but, it was rejected on 21st December, 1992. The process of appeal again started. The appeal at the instance of the petitioner to the District Panchayat Committee was allowed and thereafter the Nagar Panchayat again preferred a revision to the Development Commissioner. During the pendency of the said revision application, on 15th April, 1994, the Nagar Panchayat was converted in Municipal Borough and in view of the said conversion of the Nagar Panchayat into Municipal Borough, the revision petition was transferred by the Development Commissioner to the Secretary, Urban Development and Urban Housing Department. On 27th November, 1995, the Secretary

dismissed the revision petition and directed the Nagar Panchayat (Municipal Borough) to refund the amount which they had recovered and also to give exemption from octroi upto the date, as given in the certificate issued by the General Manager and Joint Commissioner, Industries Centre, in accordance with the order of this Court passed in Special Civil Application No.3273 of 1992, decided on 11th May, 1992.

2.2 In accordance with the said directions, the Municipality directed refund of the amount for the period ending 1st July, 1995. It appears that with effect from 1st July, 1995, certain rules were brought in existence under which the Municipality had resolved that no exemption from octroi and/or application of octroi would be allowed and all the industries would be liable to pay the octroi. After framing the rules, the Municipality refused to grant any exemption for the period between 1st July, 1995 and 18th January, 1998, that is, the date upto which the petitioner was entitled to exemption.

2.3 Being aggrieved by the said order of refusing to grant the refund and the resolution, the petitioner preferred an appeal to the Collector, who allowed the same; the Municipality, being aggrieved by the said order, filed a revision petition to the Director of Municipalities, who *vide* his order dated 20th April, 1999 allowed the revision filed by the Municipality and upheld the submission that beyond 1st July, 1995, the petitioner would not be entitled to any exemption. The petitioner is again before this Court.

3. Shri Vakil, learned Counsel for the petitioners, referring to the Government Resolution dated 15th April, 1994, submits that after conversion of the Nagar Panchayat, into the Municipality, the Municipality would be liable for all debts and obligations incurred by the

Nagar Panchayat and the rights, which have accrued in favour of any person who entered into any contract with the Municipality, would not come to an end. He submits that the judgement dated 27th November, 1995 passed by the Secretary against the Nagar Panchayat, in fact, would create liability against the Municipality because the said judgement would bind every successor of the Nagar Panchayat. According to him, the rules framed if do not allow any exemption from 1st July, 1995, then too, in the present case, in view of the judgement, the Municipality would be bound and will have to extend the exemption upto 18th January, 1998. He submits that the earlier judgement delivered by the Secretary would operate as *res judicata* between the parties, especially, when the respondent-Municipality claims to be the successor of the Nagar Panchayat.

4. Shri Munshaw, learned Counsel for the respondent-Municipality, on the other hand, submitted that so long as the rules and resolutions of the Nagar Panchayat were in force, the present petitioner would be entitled to all the benefits but in view of the rules framed by the Municipality, none can force or coerce the Municipality to grant exemption if the rules do not permit. He submits that from 1st July, 1995, the petitioner would not be entitled to any exemption and would be liable to pay octroi in accordance with the law.

5. It is undisputed that the respondent-Municipality is the successor of Zalod Nagar Panchayat. It is also not disputed that on 15th November, 1994, the said Zalod Nagar Panchayat stood converted into Zalod Municipality, it succeeded to the assets and liabilities, rights and obligations of Zalod Nagar Panchayat. The Municipality would not be allowed to say that on one side, it would succeed to the assets and properties of Zalod Nagar Panchayat, but, would not discharge the

liability of the said Zalod Nagar Panchayat. Even otherwise, if the predecessor in title of the present Municipality had lost in a case and had suffered an order adverse to its rights and interest, then, being the successor, the present Municipality would not be allowed to say that they are not bound by the judgement in view of their rule making powers.

6. Section 11 of the Code of Civil Procedure, 1908 may not apply to the administrative proceedings and orders, but, the principles underlying can certainly be applied, specially, when the authority which succeeds to the rights and liabilities of its predecessor is trying to avoid the judgement suffered by the predecessor in title. If the respondent-Municipality is permitted to raise the question of non-binding nature of the judgement, then, it is likely to create administrative anarchism because every time a judgement is suffered by the administrative authority or the local body, the very next day they will pass some resolution, make some rule and would say that the judgement has become nugatory. Even under the administrative law, the authorities are bound to act in accordance with law.

7. If the Zalod Nagar Panchayat had suffered a judgement and had continued, then, it would have been obliged to extend the exemption upto 18th January, 1998. No person claiming through the said Zalod Nagar Panchayat, therefore, would be allowed to say anything contrary to the judgement as he/it would also be bound to extend the benefit of the exemption in favour of the claimant upto 18th January, 1998. The action of the Municipality is patently illegal.

8. The order dated 20th April, 1999 passed by the Director of Municipalities, for the reasons aforesaid, deserves to and is, accordingly, quashed. The petition is allowed. It is made clear that the petitioner

would be entitled to the benefit of exemption upto 18th January, 1998 and if, in the meanwhile or prior to filing of the petition, the respondent-Municipality has recovered any amount for the period ending upto 18th January, 1998, then, on an application by the petitioner, the Municipality shall refund the amount within a period of three months from today. Rule is made absolute. No costs.

[R.S.Garg, J.]

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